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FACT SHEET

November 2006

Title IV-E Foster Care Eligibility Review and Judicial Determinations

The collaboration of the California Department of Social Services, the Administrative Office of the Courts, the local juvenile courts, child welfare departments, and probation departments was a major factor in the successful outcome of the 2006 federal title IV-E foster care eligibility review. As a result of the hard work by all of the agencies involved, California will not be required to develop and implement a costly title IV-E program improvement plan or face potential fiscal penalties. However, the federal reviewers identified several areas of needed improvement related to judicial determinations that will be subject to review during the next round of federal reviews.

Purpose

The purposes of the federal review are (1) to determine whether title IV-E foster care maintenance payments were made on behalf of eligible children and to eligible homes and institutions; (2) to identify erroneous payments; and (3) to identify promising practices and needs for training and technical assistance. The review is designed specifically to assess adherence to title IV-E eligibility criteria, which include certain critical protections for children and families.

Scope of Review

A sample of 80 cases was drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting period of October 1, 2005, through March 31, 2006. Each of the cases selected involved a child for whom at least one title IV-E foster care maintenance payment was made during this AFCARS reporting period. Substantial compliance with all federal eligibility requirements must be achieved, or a state will be required to develop and implement a program improvement plan. To be considered in substantial compliance, no more than 4 of the 80 cases reviewed can be found in error. During California's review, which took place in the summer of 2006,

only 4 of the 80 cases reviewed (77 were child welfare cases and 3 were juvenile justice cases), were in error. California was determined to be in substantial compliance.

Strengths Related to Judicial Determinations

The federal reviewers noted the following areas of strength:

1. Judicial determinations regarding the agency's reasonable efforts to prevent a child's removal from the home are made on a timely basis and are generally occurring at the detention hearing along with the contrary to child's welfare finding;
2. Seeking judicial determinations at 6-month rather than 12-month intervals, regarding reasonable efforts to finalize a child permanency plan, continues to be a noteworthy practice in helping ensure that permanency plans are assessed timely;
3. Reports to the court were generally comprehensive and well written;
4. Court orders often reflected visitation with grandparents and/or siblings; and
5. The courts often ordered the agency to place siblings together.

Areas for Improvement Related to Judicial Determinations

The federal reviewers noted some problems in the courts' use of the removal finding, "contrary to the welfare," and the permanency finding, "the agency has complied with the case plan by making reasonable efforts to enable the child's safe return and to complete whatever steps are necessary to finalize the child's permanent plan."

Contrary to a Child's Welfare to Remain in Home of Parent or Legal Guardian

Legal and related references: 42 U.S.C. § 672(a); 45 C.F.R. § 1356.21(c), Welf. & Inst. Code §§ 319(b) and 636(d); Cal. Rules of Court, rules 1446(a)(2) and 1475(c)(1)

1. Contrary to the Child's Welfare Finding and Detained at Home

One of the error cases cited by the federal reviewers involved a matter in which the judicial officer made a "continuance in the home is contrary to the child's welfare" finding and ordered the child detained in the parent's home. The child was physically removed from the parent's home several days later by social services, but no detention hearing was held. It appeared that the agency and the court were of the opinion that since a contrary to the welfare finding and order detaining the child was made earlier that another hearing need not be held. This is not correct. For federal title IV-E

purposes, this finding must be made every time a child is physically removed from the home of a parent. This includes the removal from the home of a child on electronic monitoring, home detention, furlough, or probation.

2. Contrary to the Child's Welfare Finding and Drug Courts

One of the cases reviewed originated in dependency drug court. The parent was not compliant with drug court requirements and during a drug court appearance, the judicial officer ordered the children removed from the parent's physical custody; however, the judge failed to make the contrary to the welfare finding. If the court fails to make this finding at the first hearing following the physical removal or at the hearing during which the child is physically removed, all foster care payments made on the child's behalf for the child's entire stay in foster care must be paid from state and county funds. This is why it is critical that the agency provide the information necessary for the court to make this finding at the first court hearing following the child's removal from home or at the hearing in which the child is actually physically removed, such as occurred in the drug court proceeding discussed above. The judge's finding must also be expressly reflected in the findings and orders document.

Permanency

Legal and related references: 42 U.S.C. § 675(5)(C),(F); 45 CFR §§ 1355.20, 1356.21(b)(2)(i); Welf. & Inst. Code §§ 366.21(f), 366.21(g), 366.22, 366.3, 727.3(a)(1), 11400(j), 11404.1; Cal. Rules of Court, rules 1461 and 1496

1. Concurrent Planning

The finding, "the agency has complied with the case plan by making reasonable efforts to make it possible to safely return home AND to complete whatever steps are necessary to finalize the permanent plan," is required at the time of the **prepermanency** hearing and the **permanency** hearing. It addresses the issue of concurrent planning.

The judicial determination should reflect the court's judgment as to whether the agency activities that were performed during the previous six months were meaningful in bringing about permanency for the child. This finding is an appropriate concurrent planning finding in cases where reunification is the goal, but the reviewers noted that judicial officers made this finding in postpermanency cases where reunification was no longer the child's permanency goal.

In **postpermanency** hearings following the termination of reunification services, the focus of the case plan shifts to achieving permanency for the child. The finding, "the

agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child," reflects this focus on permanency.

2. Long-Term Foster Care Is Not a Permanent Plan

Although the federal reviewers stated that assessing the appropriateness of a permanency goal was not in the scope of the review, the reviewers did note that long term foster care was identified as the goal for a sibling group of children under six in one case and for a child under the age of two in a second matter. Long-term foster care is not a permanent plan, nor should it be a permanent goal.

The permanent plans in California in order of preference are: return home; adoption legal guardianship, permanent placement with a fit and willing relative, or permanent placement with an identified placement and a specific goal.

The court should include the name of the specific relative with whom the child is placed if the permanent plan option chosen is "permanent placement with_____, a fit and willing relative."

The court should include the name of the group home, residential treatment center, or foster family if the permanent plan is an identified placement with a specific goal. Choose as a specific goal the option that provides the child with a more family like and permanent setting. Although California's Welfare and Institutions Code does continue to use the term "long-term foster care," the phrase no longer appears in the federal statutes and it is not a preferred placement under the Adoption and Safe Families Act of 1997, Public Law 105-89 (ASFA). ASFA mandates regular reviews of a child's status and permanency options. To provide the specificity needed to ensure that the agency and the court regularly assess permanency and plan for the child's future, the court should enter a placement order identifying, by name, the child's placement and specifying the goal of that identified placement, without referencing it as "long-term foster care" or "planned permanent living arrangement." The appropriate specific goal will depend upon the circumstances of the child's situation. For example, for a child in an identified group home placement, the goal could be placement with a foster family or placement with a relative.

If the placement is confidential, specify the type of placement (e.g., residential treatment center, group home, foster home, relative) followed by the term "location confidential" and provide the court with the specific location under separate cover.

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